

I7jddavc

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

New York, N.Y.

v.

S1 13 Cr. 0950-2(JMF)

GARY DAVIS,

Defendant.

-----x

July 19, 2018

2:40 p.m.

Before:

HON. JESSE M. FURMAN,

District Judge

APPEARANCES

GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

BY: EUN YOUNG CHOI

TIMOTHY TURNER HOWARD

MICHAEL DANIEL NEFF

Assistant United States Attorneys

BAKER MARQUART LLP

Attorneys for Defendant

BY: BRIAN EDWARD KLEIN

BRAFMAN & ASSOCIATES, PC

Attorneys for Defendant

BY: JACOB KAPLAN

- also present -

SA Sam Shahrani, FBI

SA Gary Alford, IRS

I7jddavc

1 THE CLERK: In the matter of the United States v.  
2 Davis, 13 Cr. 950.

3 Counsel, state your name for the record.

4 MS. CHOI: Good afternoon, your Honor. Eun Choi on  
5 behalf of the government. With me at counsel is Timothy Howard  
6 and Michael Neff of our offices, as well as Special Agent Sam  
7 Shahrani of the FBI and Special Agent Gary Alford of the IRS.

8 THE COURT: Good afternoon.

9 MR. KLEIN: Good afternoon, your Honor. Brian Klein,  
10 from Baker Marquart. With me is Jacob Kaplan from Brafman &  
11 Associates. And with us is Gary Davis, who is in custody.

12 THE COURT: Good afternoon to you as well.

13 All right. Mr. Davis, my name is Jessie Furman. I am  
14 a United States District Judge here in the Southern District of  
15 New York and have been assigned to your case, which means that  
16 I would be the judge who would preside over any trial in the  
17 event that the case were to go to trial and would be the judge  
18 in the event that you were convicted of any offense who would  
19 impose sentence on you.

20 The purpose of today's proceeding -- counsel, you can  
21 correct me if I am wrong -- is to arraign you on the charges in  
22 the indictment that charges you with one count of narcotics  
23 trafficking conspiracy, one count of computer hacking  
24 conspiracy, and one count of conspiracy to commit money  
25 laundering, and then we'll set a schedule for the case going

I7jddavc

1 forward.

2 I take it the defendant was presented before the  
3 magistrate judge but not arraigned, is that correct?

4 MS. CHOI: Yes, your Honor, last week before Judge  
5 Cott.

6 THE COURT: All right. So is there anything to  
7 discuss before I proceed to the arraignment?

8 MS. CHOI: Not from the government's perspective, your  
9 Honor.

10 THE COURT: All right.

11 Mr. Klein?

12 MR. KLEIN: No, your Honor.

13 THE COURT: All right. In that case, Mr. Davis, if  
14 you would please rise.

15 Have you seen a copy of the Indictment, 13 -- S1 13  
16 Crim. 950, containing the charges that I mentioned a moment  
17 ago?

18 THE DEFENDANT: Yes, I have, your Honor.

19 THE COURT: And have you discussed it with your  
20 lawyers?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: And would you like me to read it out loud  
23 or do you waive its public reading?

24 THE DEFENDANT: I waive the public reading.

25 THE COURT: And how do you plead at this time, guilty

I7jddavc

1 or not guilty?

2 THE DEFENDANT: Not guilty.

3 THE COURT: Thank you.

4 All right. I should note, having just glanced at the  
5 Indictment, I note that the date of the alleged conspiracy  
6 is -- begins in January 2011. I should note I think counsel  
7 are aware of the fact that I was an Assistant United States  
8 Attorney in this district before I took the bench and was in  
9 that office until March of -- February or March of 2012. I did  
10 nothing in connection with this case or any related prosecution  
11 that I am aware of. I assume the government has no knowledge  
12 to the contrary?

13 MS. CHOI: Correct, your Honor.

14 THE COURT: All right. So on that basis, I have no  
15 reason to believe that I would be recused from this matter,  
16 but, defense counsel, if you have any reason to think otherwise  
17 on that front, you can make the motion. Any motion on that  
18 issue would be due two weeks from today, and we'll set a  
19 deadline for other motions in short order.

20 All right. With that, if the government could give me  
21 a little bit of background about -- I did read the Indictment  
22 but if you could give me a little background about the  
23 charge -- the charges against Mr. Davis and the status and  
24 nature of discovery, that would be great.

25 MS. CHOI: Yes, your Honor. I think the basics are

I7jddavc

1 set forth in the Indictment. But as I'm sure you are aware,  
2 the office has pursued multiple prosecutions against  
3 individuals who are responsible for the administration of the  
4 Silk Road underground website that was on the Darknet, which  
5 sold -- was a form by which individual vendors would sell a  
6 variety of illicit goods, including but not limited to narcotics  
7 and hacking instrumentalities. So as a result, Mr. Davis,  
8 because he played a role as a customer service representative  
9 as well as an individual who would deal with vendor support,  
10 has been charged in the three conspiracies that your Honor just  
11 arraigned the defendant on, those being the narcotics  
12 trafficking conspiracy, the computer hacking conspiracy, both  
13 of which arise out of the items that were sold on Silk Road, as  
14 well as the money laundering conspiracy that's charged with  
15 regard to the operation of the website and the proceeds  
16 therefrom.

17 THE COURT: Can you just flesh out, when you say  
18 "customer service representative," or whatever phrase you used  
19 a moment ago, can you tell me what you mean by that?

20 MS. CHOI: Sure. He was an administrator who was  
21 allegedly hired by the head of Silk Road, that being the Dread  
22 Pirate Roberts, Mr. Ulbricht, who has already been convicted.  
23 He was hired by Mr. Ulbricht to help with the administration of  
24 specific instances of -- you know, questions that may have been  
25 asked by individual vendors or in instances in which there were

I7jddavc

1 conflicts or disputes between people purchasing items and the  
2 vendor selling items on the site. He would be one of the  
3 people who would be involved in resolving those disputes.

4 THE COURT: All right. Can you tell me about the  
5 nature and status of discovery?

6 MS. CHOI: Yes, your Honor. Discovery started today.  
7 I think it's best to describe discovery as belonging in two  
8 categories. The first category is generally discovery that  
9 relates to the existence and the operation of Silk Road, which  
10 involves a variety of images of servers, of the underlying  
11 website itself, meaning the actual marketplace, as well as  
12 forums that were related to those servers and other devices  
13 that have sort have been seized that will help establish the  
14 existence and the scope of the Silk Road enterprise. That is  
15 the majority of the volume of data, I would say roughly 16  
16 terabytes worth of data on that front, and as well as other  
17 types of -- you know, the applications that relate to the  
18 seizures of that information by the government that were --  
19 search warrants and the like that were pursued by the  
20 government.

21 There is another category of which that was the --  
22 which we prioritized, which is the evidence that directly  
23 relates to this defendant, and that includes seizures of  
24 private email search warrants for accounts that he used in  
25 furtherance of his operation at Silk Road as well as -- one

I7jddavc

1 moment, your Honor.

2 (Pause)

3 As well as Facebook search warrants and the search  
4 warrants and fruits of devices that were seized at the time of  
5 his arrest in Ireland. I have prioritized and produced to the  
6 defense in the first instance the affidavits in support of  
7 those seizures, with the understanding that defense counsel can  
8 review them and start determining what, if any, motions can be  
9 filed -- motions to suppress, mainly. That local data is  
10 approximately I believe on a four-terabyte drive, and there is  
11 some efforts -- the government is currently underway in trying  
12 to segregate out certain encrypted containers that may be on  
13 those various devices but can produce the bulk of that data I  
14 think over the course of the next few weeks, a month or a month  
15 and a half or so, assuming that we can get the drives from  
16 defense counsel to produce that data.

17 THE COURT: All right. And the first category -- I  
18 mean, 16 terabytes is quite a bit.

19 MS. CHOI: Yes, your Honor.

20 THE COURT: Is there some -- do you have thoughts on  
21 how defense counsel could go through that and efficiently  
22 identify what is most relevant here? I mean, I don't know to  
23 what extent the trial against Mr. Ulbricht provides some sort  
24 of template for that, if anything was done in that case that I  
25 should consider doing here, but what are your thoughts.

I7jddavc

1 MS. CHOI: In all of our cases that involve this type  
2 of data, we are happy to walk the defense through specific  
3 items. Obviously, there was a public trial in that case, and  
4 we would assume that the establish to establish the existence  
5 of Silk Road would mirror that so that we can help defense  
6 counsel identify where in that corpus of data, which is well  
7 indexed, where in that corpus of data they can find the things  
8 that they would like to see, and we are happy to work with them  
9 on that front.

10 THE COURT: When you say "devices that were seized at  
11 the time of his arrest," how many devices and what is the  
12 nature of them?

13 MS. CHOI: Your Honor, it is a fairly long list. The  
14 nature of those devices include computers, I think -- let me  
15 see. At least two computers, cellular phones, and a variety of  
16 storage devices, memory sticks, DVDs and the like, and I think  
17 that corpus of data is quite large. I don't think all of it is  
18 necessarily directly related to the case, but we will produce  
19 all of it back and identify for defense counsel the things that  
20 they should prioritize in their review.

21 THE COURT: All right. Two other questions. One is  
22 status of the speedy trial clock.

23 MS. CHOI: No days have run, your Honor. He arrived  
24 in the district last Friday, and he was arraigned -- I'm sorry.  
25 He was presented on that day, and there has been an exclusion



I7jddavc

1 of time until today.

2 THE COURT: All right. And, second, it is not clear  
3 to me -- I wouldn't think with respect to Counts One and Three  
4 there would be anyone who would qualify as a victim within the  
5 meaning of the Crime Victims' Rights Act, but I'm not sure  
6 about Count Two. Are there such people or entities?

7 MS. CHOI: Your Honor, at this time we do not believe  
8 that there have been any identified victims who are victims of  
9 hacking software that was purchased from Silk Road with regard  
10 to Count Two, but obviously if that changes we'll make sure  
11 that we make the relevant notifications.

12 THE COURT: All right. So tell me what you would  
13 propose in terms of a discovery schedule and/or ultimate  
14 deadline.

15 Sorry, before you say that, I take it no post-arrest  
16 statements were made?

17 MS. CHOI: Correct, your Honor.

18 THE COURT: OK. So, schedule?

19 MS. CHOI: Your Honor, I think that we will begin --  
20 we will continue our production. I would ask for a month to a  
21 month and a half just so they can deal with the issue of  
22 segregating out encrypted containers from the underlying  
23 devices, and I just don't know at what speed we can do that but  
24 we will do that expeditiously. Obviously, your Honor, we will  
25 produce all of the materials and prioritize all of the

I7jddavc

1 materials that would form a basis for any motions in the first  
2 instance so that defense counsel can start their review of  
3 those items first.

4 THE COURT: All right. Mr. Klein, let me hear from  
5 you. My general practice -- I don't think you've appeared  
6 before me before -- is to set a deadline for the filing of  
7 defense motions on the basis of what you know and have heard  
8 regarding discovery. It sounds like this may be a little bit  
9 more complicated than your average case so I don't know if  
10 that's feasible here. I don't know if you have any views on a  
11 deadline for the production of discovery, but I would be  
12 inclined to give the government until the end of August, until  
13 August 31st, to produce discovery with the understanding that  
14 it is to be produce on a rolling basis prioritizing the  
15 evidence that directly relates to Mr. Davis.

16 I guess question A is if you have any objection to  
17 that, or any views on that, and, B, your thoughts on setting a  
18 motion schedule at this time or if you think it makes more  
19 sense to come back shortly after that deadline or even before  
20 the deadline; what are your thoughts?

21 MR. KLEIN: Your Honor, we don't have an objection to  
22 that schedule for the discovery production.

23 One thing I would just ask, if we can get the exhibits  
24 from the trial sooner, I think those could be identified and  
25 produced to us sooner than later. I am talking about the trial

I7jddavc

1 of Mr. Ulbricht.

2 THE COURT: All right.

3 MR. KLEIN: And then as for a motion schedule, I think  
4 it is premature. 20 terabytes in total approximately is a  
5 tremendous amount of information and data. I would suggest  
6 that we come back like two weeks after that deadline in case  
7 there are any hiccups, and that gives us time to come back and  
8 then we should have a better sense of things.

9 THE COURT: All right. Ms. Choi, number one, I would  
10 think that you have the trial exhibits somewhere and those  
11 could be produced more rapidly, and I think that probably does  
12 make sense and would provide a little bit of a roadmap at least  
13 as to the first category of evidence. So, is that doable?

14 MS. CHOI: Of course, your Honor.

15 THE COURT: Great. So why don't you do that and  
16 prioritize that as well.

17 And then I am inclined to agree that coming back in  
18 mid-September after defense counsel has had some opportunity to  
19 review the landscape of evidence and we'll have a better sense  
20 of what it involves and timing and can talk about a deadline at  
21 that point, does that make sense?

22 MS. CHOI: Yes, your Honor, we think that is prudent.

23 THE COURT: All right. So we will set a discovery  
24 deadline of August 31st, again, with the understanding that  
25 discovery will be produced on a rolling basis prioritizing both

I7jddavc

1 the exhibits from the Ulbricht trial as well as evidence that  
2 directly relates to Mr. Davis.

3 I would encourage you to talk sooner rather than later  
4 about the sort of technical aspects of discovery production  
5 here. It sounds like any number of hard drives will be  
6 necessary. I'm also concerned, I want to make sure that  
7 Mr. Davis has an opportunity and ability to review discovery  
8 with defense counsel. So, the government should speak with  
9 defense counsel and, to the extent necessary, with whatever  
10 facility he is being detained in to make sure that that is  
11 feasible and doable. And if there are any issues that you need  
12 my assistance for, you certainly know how to find me.

13 Then I will have you back, let's say, Monday,  
14 September 17th at 3:45. Does that work for everybody?

15 MS. CHOI: That works for the government, your Honor.

16 MR. KLEIN: Your Honor, if I could ask that it be a  
17 Tuesday or Wednesday or Thursday? I fly in from the West Coast  
18 and I probably need to take a red eye and I prefer not to and I  
19 have a family and leave them on a Sunday. So if that is  
20 possible, to make it Tuesday or Wednesday of that week, or  
21 Thursday?

22 THE COURT: Tuesday and Wednesday don't work because  
23 Wednesday is Yom Kippur, but I will honor your request and put  
24 it on for Thursday at 4 p.m. Does that work?

25 MR. KLEIN: Yes, your Honor. Thank you.

I7jddavc

1 THE COURT: I may be a little hungry but I'll  
2 hopefully have eaten by then. All right.

3 MS. CHOI: Sorry, your Honor. That is  
4 September 20th at 4 p.m.?

5 THE COURT: Yes.

6 MS. CHOI: OK.

7 THE COURT: Is there an application with respect to  
8 the speedy trial clock?

9 MS. CHOI: Yes, your Honor. The government at this  
10 time would move for an exclusion of time between now and  
11 September 20th at 4:00 so that the parties can discuss  
12 discovery and the government can continue its production and  
13 that the parties can discuss any pretrial resolution of this  
14 case.

15 THE COURT: Any objection?

16 MR. KLEIN: No, your Honor.

17 THE COURT: I will exclude time under the Speedy Trial  
18 Act between today and September 20, 2018. I find that the ends  
19 of justice served by excluding that time outweigh the interests  
20 of the public and the defendant in a speedy trial, to allow the  
21 government to produce discovery to the defendant, and, more  
22 importantly, to allow time for the defendant and counsel to  
23 review that discovery and begin to consider what, if any,  
24 motions he wants to file.

25 Now, I have been told that there might be a bail

I7jddavc

1 application. I have since been told that there isn't. I don't  
2 know if that is an issue. It looks -- Mr. Klein is shaking his  
3 head that there is no such application. To the extent that  
4 there is going forward, I guess let us know. My general  
5 practice would probably be to have that handled in the first  
6 instance by the magistrate judge on criminal duty just because  
7 everybody is in the same place and it is sort of easy to get  
8 everyone together. All right?

9 MR. KLEIN: Yes, your Honor.

10 THE COURT: Very good.

11 Anything else?

12 MS. CHOI: Not from the government, your Honor. Thank  
13 you.

14 MR. KLEIN: Nothing from the defense, your Honor.

15 THE COURT: All right. In this case, we are  
16 adjourned. Thank you very much.

17 THE CLERK: All rise.

18 (Adjourned)